IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.314 of 2004

1.Venkitasamy
2.Thavamani
3.Amaravathy .. Petitioners (Petitioners 2 to 4)

vs.

1.Subbathal
2.Chellammal
3.N.Ganesan
4.Chandrasekar.N.
5.N.Sampathkumar
6.N.Gopal
7.N.Sarojini
8.Miss.N.Amudhakumar
9.Miss Radhamani
10.Smt.Maragatham
11.Smt.Malarvizhi
12.Smt.P.Easwari .. Respondents (Respondents)

Revision Petition filed under Article 227 of the Constitution of India against the order dated 2.1.2004, passed in I.A.No.754/2003 in O.S.No.996/1996, on the file of the III Addl. District Munsif Court, Coimbatore.

For Petitioner : Mr.Su.Srinivasan

For Respondents RR1 to 9 : Mr.E.A.Dinesh, for M/s.V.Nicholas.

RR10 to 12 : No Appearance

WEB COPY

ORDER:

This Revision Petition has been filed against the order dated 2.1.2004, passed in I.A.No.754/2003 in O.S.No.996/1996, on the file of the III Addl. District Munsif Court, Coimbatore.

2. The plaintiffs 2 to 4 in in O.S.No.996/1996 on the file of the 3rd Addl. District Munsif, Coimbatore are the revision

https://hcservices.ecourts.gov.in/hcservices/

petitioners. They are aggrieved by the order of the trial court dated 2.1.2004 made in I.A.No.754/2003 filed by them under Order 6 Rule 17 to permit them to amend the plaint as stated in the petition. The trial court by its order dated 2.1.2004 dismissed the amendment petition on the ground that P.Ws.1 and 2 were already examined and Exs.A1 to A7 were also marked and therefore the amendment petition was a belated one. The correctness of the said order is agitated before me under Article 227 of the Constitution of India.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

4. Originally the suit was filed by one Kaliammal for a decree of partition and she died pending suit. Therefore plaintiffs 2 to 4, the revision petitioners herein were brought on record as Legal Representatives of the deceased plaintiff in the year 2001. In November 2003, I.A.No.754/2003 was filed to add a fresh para 1(a) after para 1 of the plaint and also to insert a new description of property instead of schedule 'A' as well as in schedule 'B' property. This application was resisted by the respondents herein by contending that it is a highly belated one and the trial has already commenced by completing the examination of P.Ws.1 and 2 who marked Exs.A1 to A7. Accepting this contention, the amendment petition was dismissed by the trial court.

5. In 1999(II) CTC 250 (Muthuraman, S. (died) v. Dhanaradja), this court held as follows:-

> "2. The above revision is preferred against the order dated 22.11.1993 in I.A.No.3880 of 1993 in O.S.No.706 of 1991, on the file of the II Additional District Munsif, Pondicherry, dismissing the application, seeking amendment in the plaint schedule property, of course, including certain additional items in the suit property in O.S.No.706 of 1997, specifying more details as to the schedule, survey No. and extent. However, the same was rejected by the learned District Munsif on the ground that it creates a fresh cause of action.
>
> 3. In my considered opinion, there is no substance in rejecting the amendment application by the learned District Munsif on the ground that it creates a fresh cause of action, as it will not prevent or take away the right of revision petitioner/applicant to seek independent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

proceedings with regard to the additional items of the property, in which event, I am satisfied to permit the revision petitioner to amend the schedule mentioned property in order to avoid multiplicity of litigations, and therefore, I am obliged to set aside the order of the learned II Additional District Munsif, Pondicherry dated 22.11.1993 in I.A.No.3880 of 1993 in O.S.No.706 of 1991."

6. In 1997(1) CTC 413 (Pitchakaran @ Balakrishnan v. Parvathi Ammal, this court held as follows:

"9. I have carefully considered the contentions raised on behalf of the petitioner and the respondent. The law is well-settled as regards the scope of the powers of the Court to order amendment of the plaint. In Vellai Ammal and others v. Chinnammal and others, 1994(1) MLJ 98, this Court has taken the view that the relief of amendment of the pleadings cannot be denied mainly because of some mistakes, negligence, inadvertence or infraction of rules or procedure. This Court has also taken the view that however late the proposed amendment, may be the amendment may be allowed, if it can be done without injustice to the other side.

10. In Air India v. R.M.Meenakshi by duly constituted Agent N.Sivagami and others, 1991 (2) MLJ 340, a Division Bench of this Court has held that the amendment of a plaint not involving fresh or additional relief can be allowed even if there is delay, but, however, no new cause of action should be introduced by way of amendment. In G.Nagamma v. Siromanamma, 1996(2) SCC 25, the Supreme Court has held that the plaintiff is entitled to plead even inconsistent pleas. The Supreme Court has taken the view that where by any application for amendment of the plaint, the cause of action is neither changed nor the relief is materially affected, an application for amendment can be allowed."

7. Citing the above 2 decisions, the learned counsel for the petitioners submitted that the order of the trial court is liable to be set aside.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. But the learned counsel for the respondents relied on the decision of this court reported in 2005(3) CTC 412 (Kasiappa Gounder v. Karuppan) to contend that after CPC amendment Act 22 of 2002 no application for the amendment of pleadings shall be allowed after the trial has commenced unless the court comes to the conclusion that despite due diligence the party could not have raised the matter before the commencement of the trial. The learned counsel further submitted that the only reason given by them is that they had engaged a new counsel at the time of trial and only now they came to understand that the description of the property in the original plaint and certain vital points in regard to inheritance were not explained property and as such the new counsel advised them to file the amendment petition. This according to the learned counsel has hardly complied with under Order 6 Rule 17 as amended by Act 22 of 2002.

9. Order 6 Rule 17 amendment Act 22 of 2002 with effect from 1.7.2002 reads as follows:

> "The Court may at any stage of the proceedings allow either party to alter this pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial".

10. Insofar as the amendment does not change the nature of the suit or cause of action, the same can be allowed. Permitting the petitioners to amend the schedule mentioned property, adding additional items and specifying more details do not change the nature of the suit nor it creates a fresh cause of action. Therefore these amendments ought to be allowed in order to avoid multiplicity of proceedings.

11. But after amendment Act 22 of 2002, if any amendment is sought for after commencement of trial, a duty is cast upon the petitioners to satisfy the court that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

12. Then the next question which arises is whether the amended provision is applicable to the suits filed prior to 2002. This question was already considered by this court in a decision reported in 2004(3) M.L.J. 587 (Narayan Reddy v. Narayan Reddy) and held that

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the amended provision shall not apply to in respect of any pleading filed before the commencement or implementing the amended provision.

13. Therefore it is very clear that the amended provision will not apply to suits filed prior to 2002, i.e., before 1.7.2002.

14. In the case in hand, the suit was filed as early as 1996 and therefore the amended Act will not apply. Once it is held that the amended Act will not apply, then amendment can be allowed if it does not change the nature and character of the suit nor brings in a new cause of action.

15. The petitioners herein only wanted to amend A and B schedule properties by giving more details and also they wanted to add one more paragraph after paragraph 1 to explain the case further. These amendments, if carried out would not change the character of the suit, which is a suit for partition.

16. Therefore I am inclined to set aside the order of the trial court and permit the revision petitioners to carry out the amendment as prayed for on condition that the revision petitioners pay a sum of Rs.1,000/- to the 4th defendant in the suit or to his counsel directly within a period of two weeks from the date of receipt of the copy of the order. Failing compliance, the C.R.P. will automatically stand dismissed without further reference to the court.

17. With the above direction, the C.R.P. is allowed. No costs. C.M.P.Nos.3389/2004, 17184/2005 and 8981/2006 are closed.

sks 28.9.2006

For Being Mentioned:-

This Petition having been set down for Being Mentioned on this Wednesday, the fourth day of April Two thousand and Seven pursuant to the order of this Court dated 28.9.2006 and made herein in the presence of the aforesaid Advocates on either side, the Court made the following order:-

This Civil Revision Petition has been taken up on being mentioned.

Final order was passed in the CRP.289/06 on 28.9.2006.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The learned counsel appearing for the petitioner submits that as per the final order dated 28.9.2006, the cost awarded by this court has been paid in time to the learned counsel appearing for the fourth defendant and memo to that effect has also been filed to the Court below. However, it is submitted that the same has not been accepted by the Court below and consequently, the plaintiff is not able to carry out the amendment as per the final order passed by this Court on 28.09.2006. Hence, it is taken up hearing once again today at his instance.

2. In view of the fact that the conditional order of cost has been complied with by the Revision petitioner, the trial court namely III Additional District Munsif, Coimbatore is directed to accept the memo filed and permit the plaintiff to carry out the amendment as prayed for by him I.A.No.754 of 2003 immediately.

The learned counsel for the respondents/defendants has no objection for this order being passed.

vaan 4.4.2007

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

The III Addl. District Munsif, Coimbatore.

+ one cc to Mr.Su.Srinivasan, Advocate Sr.No.21634

+ one cc to Mr.V.Nicholas, Advocate Sr.No.45938.

JRG (CO)
RSM/25.10.2006
SGL(CO)
SR/9.4.2007

C.R.P.(PD)314/04.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/